IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.157 OF 2006

Indofil Chemicals Company ... Appellant

Vs.

Maharashtra General Kamgar Union & Ors. ... Respondents

Mr. P.K. Rele, senior advocate with Mr. P.N. Anarkan and Mr. Piyush Shah for the appellant.

Ms. Jane Cox for the respondents.

CORAM : SMT. RANJANA DESAI & A.P. DESHPANDE, JJ.

DATED : 26TH JULY, 2006.

P.C.:-

1. This letters patent appeal challenges the order dated 29/6/2006 passed by the learned single judge of this court in Writ Petition No.3929 of 2006. The learned single judge has by the impugned order issued Rule. Insofar as the question of interim relief is concerned, the learned single judge has directed that pending the final disposal of the petition, the services of the concerned workmen listed in Annexure "C" should be protected. The learned single judge has directed that the management would be at liberty to change the contractor to ensure that the existing canteen workmen whose names appear in Annexure "C" are continued by the new contractor. A rider is added that

this shall not preclude the contractor from taking action for disciplinary reasons. The statement made by the learned counsel appearing for the workmen is noted in the impugned order that at the final hearing of the said petition, the workmen shall not claim any additional equity on account of the fact that the services of the workmen have been protected in pursuance of the interim order of this court.

2. We have heard the learned counsel appearing for the appellant. He contended that the Industrial Court in a very detailed order, after considering the evidence and submissions of the learned counsel appearing for both sides, has recorded, inter alia, a finding that the contract between the appellant, canteen contractor and the house-keeping contractor, is not sham and bogus. It is further held that it is not a mere camouflage to deprive the benefits of wages and other benefits available to the permanent workmen. The learned counsel drew our attention to paragraphs 36 and 37 of the order passed by the Industrial Tribunal where the Industrial Tribunal has recorded that merely because the workmen are there in the establishment since 1979 onwards, it does not mean that they have succeeded in establishing the employer-employee relationship. It is further observed that there is no evidence to establish the employer-employee relationship between the Company and the concerned workmen. The learned counsel urged that in the face of these findings, the learned judge ought not to have protected the services of the workmen. In support of his submission, the learned counsel relied on the judgment of the Supreme Court in ***B.H.E.L. vs. Kamal***

Karmatar & Ors. 2001 (91) FLR 819, the judgment of the Andhra Pradash High Court in ***A.P. Dairy Development Co-operation Federation, Hyderabad v. K. Ramulu & Ors. 1989 (1) CLR 407*** and the judgment of the Gujarat High Court in ***ONGC Labour Union & Ors. v. Group General Manager (Project) O.N.G.C. Ltd., 2002 (11) CLR 610***.

3. We are not impressed by the submissions advanced by the learned counsel. What has obviously weighed with the learned single judge is the fact that from employees whose names are listed in Annexure "C", six employees are in service for about 25 years, four employees are in service for about 24 years, five employees are in service for about 23 years and one employee is in service for about 20 years. Two employees are in service since 1987 while one employee is in service since 1988. The learned single judge has observed that the other workmen have put in service between nine and sixteen years. It is having regard to the long period of service of the workmen that the learned single judge has protected them. We do not find that the learned single judge has committed any illegality. So far as the judgments sought to be relied on by the learned counsel are concerned, in our opinion, they will have to be confined to their own peculiar facts. We find no substance in the letters patent appeal. Hence, letters patent appeal is dismissed.

4. We are aware of the extremely crowded docket of the learned single judge. In the facts of this case, we only request the learned single judge to hear the instant writ petition expeditiously if possible.

[SMT. RANJANA DESAI, J.]

[A.P. DESHPANDE, J.]